

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR BER**

**Agenda III, A-1**

**Summary:** The Board initiated rulemaking at the November 16, 2001 meeting. Thomas G. Bowe was appointed Presiding Officer. On December 6, 2001 notice was printed in the Montana Administrative Register. The Water Protection Bureau mailed 814 letters to individual permit holders and interested parties, informing them of the rulemaking and the changes to their fees if the rulemaking is adopted. A hearing was held January 3, 2002. The Department's proposed Responses to Comments is provided.

**List of Affected Rules:** ARM 17.30.201

**Affected Parties Summary:** The requested rules affect all permit applicants and permit holders.

**Scope of Proposed Proceeding:** The Department is requesting adoption of rulemaking.

**Background:** The Montana Water Quality Act requires that the Board of Environmental Review adopt fee rules that are sufficient to recover the cost of issuing permits, licenses, and other authorizations issued by the Department, as well as the administrative costs of operating the program, including monitoring, inspections, compliance assistance, and enforcement. In addition to the 10 full-time employees (FTEs) in the permit program, the account funds staff in the Enforcement and Planning, Prevention, and Assistance Divisions.

**Hearing Information:** The Board conducted a hearing January 3, 2002.

**Department's Recommendation:** The Department recommends that the rulemaking be adopted with the clerical correction discussed in the hearing testimony. Additionally, the Department recommends that the Board support the position stated in Responses to Comments: For those small communities and businesses requiring more time to adjust their budgets to accommodate the increase, the Department agrees to use its enforcement discretion to allow a one-time late payment of the increased portion of the fee without penalty if the full amount is paid within 180 days.

**Board Options:** The Board may:

1. Adopt the rulemaking;
2. Determine that the adoption of rules is not appropriate and decline to adopt the rulemaking; or
3. Direct the Department to modify the specific costs of permits in a selective manner, but within the scope of the noticed rulemaking, and adopt the modified language.

**Enclosures:**

1. Presiding Officer's Report, including hearing transcript and written comments
2. Notice of Adoption of Amendment of ARM 17.30.201